IN THE

SUPREME COURT OF THE UNITED STATES

1973

STATE OF MICHIGAN)

ss:

COUNTY OF GRATIOT)

AFFIDAVIT OF SERVICE

Henry Francis Walters, Appellant herein, through his attorney Phillip E. Smith, after being duly sworn, deposes and says:

That on this date, February 2nd, 1973, true copies of this Motion to Proceed in the Supreme Court of the United States seeking a Writ of Certiorari, along with copies of the appendix, were served on the Mr. Ralph B. Guy, Jr., U.S. District Attorney, Eastern District of Michigan, 817 Federal Building, Detroit, Michigan 48226.

These copies were served via placing same in self-addressed envelopes, with postage fully prepaid, and deposited in the United States mail box.

Phillip E. Smith

Subscribed and sworn to before me this 2nd day of Feb., A. D. 1973.

Carolyn K. Pawson,
NOTARY PUBLIC
Gratiot County, Michigan

My Commission Expires: May 5, 1975

IN THE

SUPREME COURT OF THE UNITED STATES

1973

UNITED STATES OF AMERICA,
Appellee

v.

No.....

HENRY FRANCIS WALTERS,
Appellant

MOTION FOR LEAVE TO PROCEED
FOR WRIT OF CERTIORARI

Now comes Henry Francis Walters, Appellant herein, through his attorney Phillip E. Smith, and respectfully moves this Honorable Court, pursuant to 28 U.S.C. 1915 and Rules 19.1(b), and 39 of this Court, for an Order granting leave to proceed in this cause for a Writ of Certiorari.

The annexed affidavit of Appellant is filed in support of this Motion.

Respectfully submitted,

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Phillip E. Smith

BUSINESS ADDRESS:
Phillip E. Smith
Attorney at Law
135 W. Center Street
Alma, Michigan 48801
PHONE: 463-4121

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED

STATE OF MICHIGAN)
ss:
COUNTY OF GRATIOT)

Henry Francis Walters, through his attorney Phillip E. Smith, being duly sworn, deposes and says:

1. This is an affidavit in support of a Motion For Leave in The Supreme Court of the United States requesting review of proceedings in the courts below, including decissions of the United States Court of Appeals for the Sixth Circuit, No. 72-1406, dated December 1, 1972, and a brief order from the same Court, No. 72-1406, dated January 3, 1973, which affirmed the rulings of the United States District Court in granting the Government's motion to consolidate the two defendants for trial purposes when the Appellant herein, Henry Frances Walters, was not remotely connected with any of the Indictments against his alleged co-defendant, Phillip C. Hobdy.

2. The rulings and decisions to consolidate and the denial of severance violated Appellant, Henry Francis Walters', Constitutional rights to a fair and impartial trial and the rulings and decisions were in direct conflict with innumerable decisions of United States Circuit Court of Appeals, **Daley v. United States** (CA Mass, 1956), 231 F.2nd 123; **Ingram v. United States** (CA 4, 1959), 272 F.2nd 567, and also decisions of this Court, **Bruton v. United States** (1968), 391 US 123, 20 L.Ed 2nd 476; **McElroy v. United States** (1896), 164 US 76, 17 S.Ct. 31, 41 L.Ed. 353.

3. Appellant seeks Appellate review on the merits to determine whether said rulings on the consolidation and the timely motion for severance violated his fundamental rights to a trial free of prejudice. A more detailed statement as to the grounds on which he believes he is entitled to relief is set forth in the Petition for Writ of Certiorari filed herewith.

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Phillip E. Smith

Subscribed and sworn to before me this 2nd day of Feb., A.D. 1973.

Carolyn K. Pawson,
NOTARY PUBLIC
County of Gratiot

My Commission Expires: May 5, 1975